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4-17-95

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15 CHURCH OF SCIENTOLOGY  
16 INTERNATIONAL

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 FOR THE COUNTY OF MARIN

19 CHURCH OF SCIENTOLOGY	)	CASE NO. BC 157680
20 INTERNATIONAL, a California not-	)	
21 for-profit religious corporation,	)	PLAINTIFF'S COMBINED REPLY
22	)	IN SUPPORT OF MOTION FOR
23	)	SUMMARY ADJUDICATION OF THE
24	)	TWENTIETH CAUSE OF ACTION
25	)	OF PLAINTIFF'S COMPLAINT
26	)	AND MOTION FOR SUMMARY
27	)	ADJUDICATION OF THE
28	)	THIRTEENTH, SIXTEENTH,
	)	SEVENTEENTH AND NINETEENTH
	)	CAUSES OF ACTION OF
	)	PLAINTIFF'S COMPLAINT
29 GERALD ARMSTRONG; DOES 1 through	)	
30 25, inclusive,	)	DATE: April 21, 1995
31	)	TIME: 9:00 a.m.
32	)	DEPT: 1
33	)	
34	)	
35	)	
36	)	
37	)	
38	)	TRIAL DATE: May 18, 1995

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I.

INTRODUCTION

Plaintiff Church of Scientology International's two motions for summary adjudication seek an award of liquidated damages in the amount of \$200,000, and the entry of a permanent injunction against defendant Gerald Armstrong. The motions are well-supported, virtually unopposed, and should be granted. The declaration of Lawrence Wollersheim, filed by Armstrong on April 10, 1995 without this Court's permission, should be stricken.

II.

THE OPPOSING DECLARATION FILED BY ARMSTRONG  
SHOULD NOT BE CONSIDERED AT ALL

A. The Declaration Was Not Timely Filed Or Served

The rules concerning oppositions to summary adjudication motions are very clear. A party opposing such a motion before this Court is required to file and serve "[a]ny opposition to the motion. . . not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise." Code of Civil Procedure Section 437c(b). Defendant Armstrong was fully aware of this statute. On April 7, 1995, the date on which his oppositions were due to be filed and served, he brought an ex parte application to this Court for a continuance. [Declaration of Laurie J. Bartilson] Plaintiff opposed the application, arguing, inter alia, that Armstrong had already delayed hearing on the motions by 3 weeks, pushing the hearing to within 30 days of the trial date. This Court denied Armstrong's application, stating that no good cause existed for the requested continuance. [Id., ¶ 3]

1 Armstrong filed and served nothing on April 7, 1995. On  
2 April 11, 1995, plaintiff's counsel received a telephone call  
3 from the Court's research attorney. While sorting out the dates  
4 on which the motions were to be heard, the research attorney  
5 informed Ms. Bartilson that Armstrong had filed a declaration in  
6 opposition to one of the motions on Monday, April 10, 1995. [Id.,  
7 ¶ 4] On April 12, 1995, Armstrong telefaxed Ms. Bartilson a  
8 letter stating that he had mailed a declaration and exhibits to  
9 her on April 10, 1995, and that he had filed no other documents  
10 "thus far." [Id.] Plaintiff's counsel has received nothing from  
11 Armstrong beyond the single, late-filed declaration. [Id.]<sup>1</sup>

12 Armstrong thus filed and served his single opposing  
13 declaration three days late, in violation of both the Code of  
14 Civil Procedure and this Court's clear order. The declaration  
15 should be stricken, and Armstrong sanctioned.

16 **B. The Opposition Is Not Complete**

17 Marin Court Rule 3.13(M) provides that:

18 **Documents in Support of Opposition to Motion for**  
19 **Summary Judgment/Adjudication.** The opposition to a  
20 motion for summary judgment must consist of the  
21 following documents titled as shown:

22 1. [Opposing Party's] Memorandum of Points and  
23 Authorities in Opposition to [Moving Party's] Motion  
24 for Summary Judgment.

25 2. [Opposing Party's] Separate Statement of  
26 Undisputed Material Facts in Opposition to [Moving  
27 Party's] Motion for Summary Judgment.

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28 <sup>1</sup>This is not the first time that Armstrong has improperly, and  
without permission, late-filed papers opposing plaintiff's  
motions. The first time it occurred, this Court accepted the  
papers and fined Armstrong \$49. The last time it occurred, in  
January, 1995, this Court ordered the papers stricken, and  
sanctioned Armstrong and his counsel \$700. [Bartilson Dec., ¶ 6 ]

1           3.    [Opposing Party's] Evidence in Support of  
2           Opposition to [Moving Party's] Motion for Summary  
3           Judgment.

4           4.    [Opposing Party's] Request for Judicial  
5           Notice in Opposition to [Moving Party's] Motion for  
6           Summary Judgment (if appropriate).

7           5.    Proposed Order Denying Motion for Summary  
8           Judgment.

9           [Emphasis added]

10           Armstrong has filed none of these required documents. In  
11           essence he has asked the Court to determine how, if at all, his  
12           late-filed declaration of Lawrence Wollersheim negates some  
13           element of plaintiff's claims, or creates an issue of material  
14           fact as to any of the facts which plaintiff must prove to  
15           prevail. The Court should decline to perform this function, and  
16           strike Armstrong's late-filed, incomplete opposition.<sup>2</sup>

17           **C. The Declaration Is Not Admissible Evidence**

18           Wollersheim's declaration and its attachments consist almost  
19           exclusively of unauthenticated hearsay coupled with Wollersheim's  
20           opinions. That Wollersheim shares Armstrong's dislike for his  
21           former faith is manifest, but irrelevant to any of the issues  
22           presented by the summary adjudication motions. For detailed  
23           objections to this improper declaration, see the Church's  
24           separately filed Objections to Evidence Filed In Opposition to  
25           Motions for Summary Adjudication and Motion to Strike.

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26           <sup>2</sup>    Armstrong's status as a pro per litigant should not excuse  
27           him from complying with these rules. For three years in this  
28           litigation he not only had a lawyer, but worked with that lawyer  
29           as a paralegal on his own case. His knowledge of, and  
30           familiarity with, the Code of Civil Procedure and the Rules of  
31           this Court are manifest in the three motions which he brought to  
32           continue the hearings on these summary adjudication motions.

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III

**EVEN IF THE COURT CONSIDERS THE DECLARATION FILED  
BY ARMSTRONG, THE DECLARATION DOES NOT CREATE ANY  
ISSUE OF FACT WHICH WOULD REFUTE PLAINTIFF'S  
CLEAR CASE FOR SUMMARY ADJUDICATION OF FIVE CAUSES OF ACTION**

In the moving papers, the Church set forth the elements which it must demonstrate in order to prevail on its breach of contract claims as a matter of law, and the evidence which demonstrated that the facts as to these elements are undisputed. The undisputed evidence, consisting almost exclusively of Armstrong's own admissions, demonstrates the existence of the contract, the terms of the contract, consideration paid by the Church, Armstrong's repeated, admitted breaches, and Armstrong's intention to continue to breach the contract at every opportunity, "no matter what a court says." Nothing in the sole declaration proffered by Armstrong refutes any of these facts.

A permanent injunction may be granted to prevent breach of contract "[w]here pecuniary compensation would not afford adequate relief" or "[w]here the restraint is necessary to prevent a multiplicity of judicial proceedings." Civil Code § 3422(1), (3). The scope and extent of the injunction are based on the need demonstrated by the moving party, and are committed to the sound discretion of the Court.

By his silence, Armstrong has conceded that a permanent injunction is mandated. The declaration offered by Armstrong appears to address, solely, the scope of that injunction. The import of Wollersheim's poisonous ramblings<sup>3</sup> appears to be that

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<sup>3</sup> The apparent intent of the declaration is to convince the Court that Armstrong is not the only person who thinks that the  
(continued...)

1 he wishes the Court would not restrain FACTNet, the corporation  
2 which he shares with Armstrong, as plaintiff has requested.  
3 Wollersheim, however, has provided no evidence of any facts which  
4 would support an injunction lessened in scope from that which the  
5 Church has delineated in its proposed order. Instead,  
6 Wollersheim's declaration and attachments provide a graphic  
7 example of the scope of the harm which Armstrong has been able to  
8 inflict on plaintiff by using FACTNet as an anti-Scientology  
9 soapbox. As Wollersheim himself proclaims, FACTNet has "assisted  
10 [Armstrong] with . . . telling the world the story of the abuse  
11 (sic) of Gerry Armstrong." Wollersheim Dec., ¶ 8.<sup>4</sup>

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12 <sup>3</sup>(...continued)  
13 Church is "bad," and that, because Wollersheim also thinks the  
14 Church is "bad," Armstrong should not have to keep his agreement  
15 with the Church. As Wollersheim himself states in his  
16 declaration, he has had no contact with the Church, except as an  
17 adverse litigant, for fifteen years. Wollersheim has no personal  
18 knowledge concerning most of the allegations he makes in his  
19 declaration and its attachments; what he has is a litigant's  
20 arsenal of false and misleading commentary, provided to him in no  
21 small part by Gerald Armstrong. The Church could, obviously,  
22 devote time, energy, and a couple of trees to demonstrating that  
23 Wollersheim's "evidence" consists of the false ravings of a  
24 money-hungry lunatic. The Church will not so destroy the Court's  
25 time. Wollersheim's opinion that the plaintiff is "bad" is  
26 irrelevant to these proceedings. Indeed, perhaps the only  
27 relevant communication contained in Wollersheim's declaration is  
28 his admission that FACTNet needs and uses almost exclusively  
materials provided by Armstrong in order to perpetrate its anti-  
Scientology campaign and foment litigation against plaintiff and  
other Churches of Scientology. [Wollersheim Dec., ¶ 10]

<sup>4</sup> Indeed, Armstrong's use of FACTNet to "tell the world" about  
his claimed Scientology knowledge and experiences continues  
unabated. The documents which Wollersheim attaches to his  
declaration as part of FACTNet's anti-Scientology "library" are  
rife with material concerning Armstrong. Recently, Armstrong  
chose to breach the Agreement yet again by forwarding a lengthy  
document to FACTNet Treasurer, Bob Penney, who promptly, at  
Armstrong's request, published the document to thousands of  
people on the Internet. If no permanent injunction issues, this  
breach will of necessity become part of still another legal  
action against Armstrong.

1           The declaration does not address, at all, any of the issues  
2 presented in the Church's motion for summary adjudication of  
3 breaches of the thirteenth, sixteenth, seventeenth and nineteenth  
4 causes of action. In their moving papers, the Church provided  
5 undisputed evidence that Armstrong had breached the Agreement by  
6 (1) Giving a videotaped interview concerning his claimed  
7 Scientology knowledge and experiences to Sylvia "Spanky" Taylor,  
8 at a convention of the Cult Awareness Network in November, 1992;  
9 (2) Giving interviews, and sending information, to Newsweek  
10 reporter Charles Fleming, concerning his claimed Scientology  
11 knowledge and experiences in June and August, 1993; (3) Giving  
12 an interview to E! TV reporters concerning his claimed  
13 Scientology knowledge and experiences in August, 1993; and (4)  
14 Providing declarations concerning his claimed Scientology  
15 knowledge and experiences to Graham Berry, attorney for Uwe  
16 Geertz, in the case of Church of Scientology International v.  
17 Steven Fishman et al., United States District Court for the  
18 Central District of California, Case No. 91-6426 HLH (Tx) (the  
19 "Fishman case") in February and April, 1994. Each of these  
20 breaches warrants imposition of liquidated damages in the amount  
21 of \$50,000, for an aggregate award of \$200,000.

#### 22   IV.

#### 23   CONCLUSION

24           The Church has suffered substantial and irreparable harm due  
25 to Armstrong's deliberate and systematic violations of the  
26 Agreement by "telling the world" what he thinks about  
27 Scientology, and the Church will continue to suffer substantial  
28 and irreparable harm absent issuance of a permanent injunction.

1 The facts of the making of the Agreement, performance by the  
2 Church, Armstrong's repeated breaches, and Armstrong's dedication  
3 to continuing to breach the Agreement are undisputed. A limited  
4 preliminary injunction has already issued, but it has not  
5 prevented him from continuous additional breaches. The evidence  
6 of Armstrong "avoiding" that limited injunction, and continuing  
7 to breach the Agreement, is overwhelming. Liquidated damages are  
8 available for some of these breaches, and should be awarded.  
9 However, issuance of a permanent injunction is also necessary for  
10 plaintiff to obtain meaningful relief.

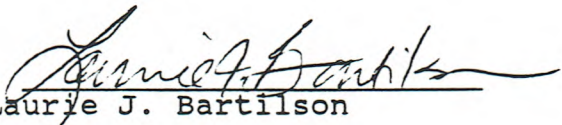
11 Plaintiff respectfully requests that this Court enter the  
12 proposed permanent injunction, and adjudicate the thirteenth,  
13 sixteenth, seventeenth and nineteenth causes of action in  
14 plaintiff's favor.

15 Dated: April 14, 1995

Respectfully submitted,

16 Andrew H. Wilson  
17 WILSON, RYAN AND CAMPILONGO

18 MOXON & BARTILSON

19 By:   
20 Laurie J. Bartilson

21 Attorneys for Plaintiff  
22 CHURCH OF SCIENTOLOGY  
23 INTERNATIONAL



PROOF OF SERVICE

STATE OF CALIFORNIA            )  
  )    ss.  
COUNTY OF LOS ANGELES        )

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On April 14, 1995, I served the foregoing document described as PLAINTIFF'S COMBINED REPLY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE TWENTIETH CAUSE OF ACTION OF PLAINTIFF'S COMPLAINT AND MOTION FOR SUMMARY ADJUDICATION OF THE THIRTEENTH, SIXTEENTH, SEVENTEENTH AND NINETEENTH CAUSES OF ACTION OF PLAINTIFF'S COMPLAINT on interested parties in this action,

by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing  the original  true copies thereof in sealed envelopes addressed as follows:

GERALD ARMSTRONG  
715 Sir Francis Drake Blvd.  
San Anselmo, CA 94960-1949

MICHAEL WALTON  
700 Larkspur Landing Circle  
Suite 120  
Larkspur, CA 94939

BY MAIL

\*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party

served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.

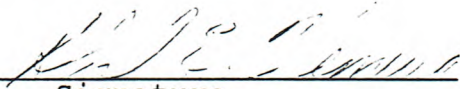
[ ] **\*\* (BY PERSONAL SERVICE)** I delivered such envelopes by hand to the offices of the addressees.

Executed on April 14, 1995, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Paul E. Verova  
Print or Type Name

  
Signature

\* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

\*\* (For personal service signature must be that of messenger)